



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105

JUL 1 2 1999

SFUND RECORDS CTR  
50980

Harold J. Biaggini  
1148 Market Street  
Morro Bay, CA 93442

CERTIFIED MAIL NO. P 274 217 256  
RETURN RECEIPT REQUESTED

Edward C. Biaggini, III  
5240 Chauplin Avenue  
Atascadero, CA 93422

CERTIFIED MAIL NO. P 274 217 257  
RETURN RECEIPT REQUESTED

Buena Vista Mine, Inc.  
1148 Market Street  
Morro Bay, CA 93442

CERTIFIED MAIL NO. P 274 217 260  
RETURN RECEIPT REQUESTED

Re: CERCLA Section 106 Unilateral Administrative Order 99-13;  
Buena Vista/Klau Mine Superfund Removal Site

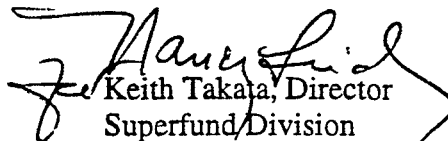
To whom it may concern:

The United States Environmental Protection Agency ("EPA") hereby issues the enclosed Unilateral Administrative Order, number 99-13, pursuant to EPA's authority under Section 106 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. Section 9606, to prevent or mitigate the imminent and substantial endangerment to the human health, welfare, and environment posed by the Buena Vista/Klau Mine Superfund Removal Site, located approximately 12 miles west of Paso Robles, California.

The Order requires each named Respondent to take immediate actions to prevent and contain any release or potential release of hazardous substances, materials, and/or wastes from the Buena Vista/Klau Mine Site. Please be advised that pursuant to paragraph 19 of the UAO, the UAO is effective seven days after receipt by Respondent, or on or about July 20, 1999. Pursuant to paragraph 34, Respondents have two days thereafter to notify EPA of their intent to comply (NTC) with the UAO. A failure on the part of any Respondent to provide the required NTC shall be interpreted by EPA as a refusal to comply with the UAO.

If you have technical questions regarding the Order, please contact Dan Suter at (415) 744-2297. If you have any legal questions, please contact David Rabbino at (415) 744-1336.

Sincerely,

  
Keith Takata, Director  
Superfund Division

encl.: Unilateral Administrative Order 99-13

1 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
2 REGION IX

3 IN THE MATTER OF:

4 BUENA VISTA MINE, INC.,  
5 HAROLD J. BIAGGINI; and  
6 EDWARD C. BIAGGINI, III

U.S. EPA Docket No. 99-13

UNILATERAL ADMINISTRATIVE  
ORDER FOR  
PERFORMANCE OF REMOVAL ACTION

7 Proceeding Under Section 106(a)  
8 of the Comprehensive Environmental  
9 Response, Compensation, and  
Liability Act of 1980,  
42 U.S.C. § 9606(a)).

10 I. AUTHORITY

11 This Unilateral Administrative Order ("Order") is issued on this date pursuant to the  
12 authority vested in the President of the United States by Section 106(a) of the Comprehensive  
13 Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §9606(a), as  
14 amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499  
15 ("CERCLA"). The President delegated this authority to the Administrator of the United States  
16 Environmental Protection Agency ("EPA" or "Agency") by Executive Order 12580, January 23,  
17 1987, 52 Fed. Reg. 2923, and further delegated it to the Assistant Administrator for Solid Waste  
18 and Emergency Response and the Regional Administrators by EPA Delegation Nos. 14-1-A and  
19 14-14-B. This authority has been redelegated to the Director, Superfund Division, EPA, Region  
20 9 ("Director") by Region 9 Delegations 1290.06 and 1290.14

21 II. PARTIES BOUND

22 1. This Order shall apply to and be binding upon Buena Vista Mine, Inc., Harold J.  
23 Biaggini, and Edward C. Biaggini, III, (collectively "Respondents"), and their agents, successors  
24 and assigns. No change in ownership or operational status will alter Respondents' obligations  
25 under this Order. Notwithstanding the terms of any contract or agreement, Respondents are  
26 responsible for compliance with this Order and for ensuring that their employees, contractors,  
27 and agents comply with this Order. Respondents shall provide a copy of this Order to all  
28 contractors, subcontractors, and consultants which are retained by Respondents to perform the  
work required by this Order, within seven (7) days after the Effective Date of this Order or

1 within five (5) days of retaining their services, which ever is sooner.

2 2. Respondents may not convey any title, easement, or other interest they may have,  
3 either individually or collectively, in any property comprising the Site, as the term "Site" is  
4 defined below, without a provision permitting the continuous implementation of the provisions  
5 of this Order. Any Respondent wishing to transfer any title, easement, or other interest it may  
6 have in any property comprising the Site shall provide a copy of this Order to any subsequent  
7 owner(s) or successor(s) before any ownership rights are transferred. Any such Respondent shall  
8 advise U.S. EPA six (6) months in advance of any anticipated transfer of interest.

### 9 III. DEFINITIONS

10 3. Unless otherwise expressly provided herein or in the Definitions in exhibit "A"  
11 attached hereto, terms used in this Order which are defined in CERCLA or in regulations  
12 promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such  
13 regulations. Whenever the terms listed below are used in this Order, or in the Exhibits attached  
14 hereto and incorporated hereunder, the following definitions shall apply:

15 "CERCLA" shall mean the Comprehensive Environmental Response,  
16 Compensation, and Liability Act of 1980, as amended by the Superfund Amendments &  
17 Reauthorization Act of 1986, 42 U.S.C. § 9601 et seq.

18 "Unilateral Order" or "Order" shall mean this Unilateral Administrative Order,  
19 EPA docket number 99-13, and all exhibits attached hereto. In the event of a conflict between  
20 this Unilateral Order and any exhibit, this Unilateral Order shall control.

21 "EPA" shall mean the United States Environmental Protection Agency and any  
22 successor departments or agencies of the United States.

23 "National Contingency Plan" or "NCP" shall mean the National Oil and  
24 Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of  
25 CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300.

26 "Response actions" shall be those specific work items Respondents are required to  
27 perform at the Site pursuant to this Unilateral Order, as set forth in EPA's Action Memorandum,  
28 attached hereto as exhibit "B".

1 "Respondents" shall mean Buena Vista Mine, Inc., Harold J. Biaggini, and  
2 Edward C. Biaggini, III, both individually and collectively.

3 "State" shall mean the State of California, and all of its political subdivisions,  
4 including the Central Coast Regional Water Quality Control Board ("RWQCB").

5 "United States" shall mean the United States of America.

#### 6 IV. FINDINGS OF FACT

7 4. The Buena Vista/Klau Mercury Mine Site consists of two adjacent parcels of  
8 property. The Buena Vista Mine is the property located at Township 26S and 27S, Range 10E,  
9 Sections 3, 4, 33 and 34 of the U. S. Geological Survey Series (USGS), Mount Diablo Base &  
10 Meridian, Aldelaida 15 minute Quadrangle. The Buena Vista Mine Property is listed as  
11 assessment parcels 014-341-003 and 014-341-004 of the San Luis Obispo County Assessor's  
12 Office. The Klau Mine is the property located at Township 26S, Range 10E, Section 33 USGS  
13 Mount Diablo Base & Meridian, Aldelaida 15 minute Quadrangle. The Klau Mine property is  
14 listed as assessment parcels 014-341-001 of the San Luis Obispo County Assessor's Office. The  
15 area surrounding the Site is largely used for grazing purposes. The Lake Nacimiento Reservoir is  
16 approximately 10 miles north of the Site.

17 5. The Buena Vista/Klau Mine Site consists of two abandoned mine sites which  
18 encompasses approximately 175 acres, including five miles of underground workings, a two acre  
19 mine pit, and eroded slopes comprised of approximately 300,000 tons of mine tailings,  
20 overburden and waste rock. The mine slopes are eroding into tributaries of Las Tablas Creek  
21 which flows to the Lake Nacimiento Reservoir. Approximately 100,000 cubic yards of mine  
22 tailings have been consolidated next to a drainage channel. These tailings are generating Acid  
23 Mine Drainage (AMD) at the rate of between five and ten gallons per minute. Additional AMD  
24 is being generated from the surface expressions of the below ground workings. A small lake  
25 approximately one acre in size, and 12 to 18 feet deep is situated above the underground  
26 workings on the Klau mine property. This lake is likely recharging the underground workings  
27 and causing additional AMD generation. The area around the Site is characterized by very steep  
28 topography, with elevation ranging from 1,050 feet to more than 1,600 feet. Las Tablas Creek is

1 a tributary to the Lake Nacimiento Reservoir, which in turn flows into the Salinas River, which  
2 in turns flows into the Monterey Bay National Marine Sanctuary.

3 6. BVMI is the current owner of the Buena Vista/Klau Mine Site, and has owned the  
4 Buena Vista Mine since at least 1957 and the Klau Mine since at least 1964. Harold J. Biaggini  
5 is a current operator of the Site and was a past operator at times of disposal. Edward C. Biaggini,  
6 III, is a current operator of the Site and was a past operator at times of disposal.

7 7. In 1994, the RWQCB commissioned a study that concluded that the Buena  
8 Vista/Klau Site is the primary contributing source of mercury loading and contamination in the  
9 Las Tablas Creek and Lake Nacimiento Reservoir system. The RWQCB has also conducted  
10 water quality sampling on a regular basis to the present day, and has in its possession analytical  
11 data which EPA has reviewed of samples from the mine tailings, the sediment eroding into Las  
12 Tablas Creek, Las Tablas Creek sediment, dissolved mercury concentrations in Las Tablas Creek  
13 water and background conditions. Total mercury concentrations in background sediments (all in  
14 mg/kg or parts per million, "ppm") ranged from .04 to 1.0, with a mean concentration of .276.  
15 Total mercury concentrations in sediment eroding from the Klau Mine into Las Tablas Creek  
16 ranged from 5.5 to 16,500 ppm, with a mean concentration of 2259 ppm. The mine tailings pile  
17 at the Buena Vista Mine contain mercury concentrations of up to 940 ppm. Dissolved mercury  
18 concentrations in Las Tablas Creek water directly below the mine ranged as high as 0.046 mg/L.  
19 All water samples collected significantly exceeded the EPA ambient water quality criteria for  
20 mercury of 0.000012 mg/L.

21 8. The RWQCB study also found a significant bioaccumulation of mercury in  
22 several fish species in the Lake Nacimiento Reservoir.. Elevated mercury concentrations in the  
23 fish has triggered the San Luis Obispo County Environmental Health Department to issue a  
24 Health Advisory on Catching and Eating Fish in Lake Nacimiento and Las Tablas Creek,  
25 warning women who are pregnant or who may soon become pregnant, nursing mothers, and  
26 children under five not to eat fish caught in this area; and warning all persons not to eat more  
27 than one meal per month of fish caught in this area. The California Department of Health  
28 Services (DHS) has also posted health advisories along Las Tablas Creek and at Lake

1 Nacimiento Reservoir.

2 9. The Buena Vista Mine and the Klau Mine have been the subject of significant  
3 regulatory enforcement efforts for approximately the past ten years. The RWQCB has issued  
4 several Cease and Desist Orders (CDOs) to BVMI, under its authority under the State of  
5 California Porter-Cologne Act, in response to discharges from the Buena Vista and Klau mines  
6 in violation of various National Pollution Discharge Elimination System (NPDES) permits. EPA  
7 has also issued two Findings of Violation and Orders for Compliance to BVMI arising out of  
8 discharges from the two mines in excess of the effluent and narrative limitations in their  
9 respective NPDES permits.

10 V. CONCLUSIONS OF LAW

11 10. The Buena Vista Mine/Klau Mine Superfund site is a "facility" as that term is  
12 defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9);

13 11. The Respondents, Buena Vista Mine, Inc. ("BVMI"), Harold J. Biaggini, and  
14 Edward C. Biaggini, III, are each "persons" as that term is defined in Section 101(21) of  
15 CERCLA, 42 U.S.C. § 9601 (21);

16 12. The Respondent BVMI is the present owner and a present operator of the Site,  
17 and is also the past owner and a past operator of the Site at times of disposal. Harold J. Biaggini  
18 and Edward C. Biaggini, III, are both present operators at the Site, and past operators at times of  
19 disposal. Respondents are each "liable parties" within the meaning of Section 107(a), 42 U.S.C.  
20 §9607(a), and are subject to this Order under Section 106(a) of CERCLA, 42 U.S.C. §9606(a);

21 13. Numerous substances have been found at the Site, including but not limited to  
22 chromium, copper, manganese, mercury, and nickel. Each of these substances are each  
23 "hazardous substances" as that term is defined in Section 101(14) of CERCLA, 42 U.S.C. §  
24 9601(14);

25 14. The past, present or future migration of hazardous substances from the Site  
26 constitutes an imminent and substantial endangerment due to the actual or threatened "release" of  
27 hazardous substances, as the term "release" is defined in Section 101(22) of CERCLA, 42 U.S.C.  
28 § 9601(22);

1 **VI. DETERMINATIONS**

2 Based on the Findings of Fact and the Conclusions of Law, the Director of the Superfund  
3 Division, U.S. EPA Region IX, has made the following determinations:

4 15. That an actual or threatened release of hazardous substances from the Site/facility  
5 presents an imminent and substantial endangerment to the public health or welfare or the  
6 environment.

7 16. That conditions present at the Buena Vista/Klau Mine Site constitutes a threat to  
8 public health or welfare or the environment based upon a consideration of the factors set forth in  
9 the NCP at 40 C.F.R. § 300.415(b), and that the actions required by this Order are necessary to  
10 protect the public health, welfare and the environment.

11 17. The actions required by this Order, if properly performed, will be deemed  
12 consistent with the National Contingency Plan, 40 C.F.R. Part 300 ("NCP"), and are appropriate  
13 to protect the public health or welfare or the environment.

14 **VII. NOTICE TO THE STATE**

15 18. Pursuant to Section 106(a) of CERCLA, 42 U.S.C. §9606(a), U.S. EPA has  
16 notified the State of California of the issuance of this Order by providing the Central Coast  
17 Regional Water Quality Control Board a copy of this Order.

18 **VIII. EFFECTIVE DATE**

19 19 This Order is deemed effective seven (7) days following the receipt of the Order  
20 by Respondents unless a conference is requested as provided herein. If such a conference is  
21 requested, this Order shall be effective the second (2nd) day following the day of such  
22 conference unless modified in writing by U.S. EPA.

23 **IX. ORDER**

24 Based on the Findings of Fact, Conclusions of Law, and Determinations, U.S. EPA  
25 hereby orders Respondents to perform the specific work set forth below under the direction of the  
26 U.S. EPA's On-Scene Coordinator, and to comply with all requirements of this Order:

27 **A. Work and Deliverables:**

28 20. a. Within seven (7) calendar days after the effective date of this Order,

1 Respondents shall notify U.S. EPA in writing of the name, title and qualifications of the  
2 individual(s) who will be responsible for carrying out the terms of this Order, and the name(s) of  
3 any contractor(s) or subcontractor(s). The qualifications of the persons, contractors, and  
4 subcontractors undertaking the work for Respondents shall, in accordance with paragraphs 25  
5 and 26 below, be subject to U.S. EPA review and acceptance.

6           b. Within fourteen (14) calendar days after the effective date of this Order,  
7 Respondents shall prepare and submit to the U.S. EPA for approval all workplan(s) and  
8 specification(s) for the removal activities required by this Order. The removal activities required  
9 by this Order include, but may not be limited to, the encapsulation of reactive mine tailings,  
10 implementation of engineering erosion controls to prevent the release of hazardous substance  
11 bearing sediments from the Site, preventing the release of Acid Mine Drainage (AMD) from the  
12 Site, and characterization of the lateral and horizontal migration of hazardous substances at the  
13 Site. The Workplan shall provide a concise description of the activities to be conducted to  
14 comply with the requirements of this Order, and shall include a proposed schedule for the  
15 implementation and completion of the required removal activities. Respondents Workplan shall  
16 include:

17           c.       a Health & Safety Plan prepared in accordance with EPA's Superfund  
18 Standard Operating Safety Guide, dated June 1992, and shall comply with all current  
19 Occupational Safety and Health Administration ("OSHA") regulations applicable to Hazardous  
20 Waste Operations and Emergency Response, 29 C.F.R. Part 1910. Respondents shall incorporate  
21 all changes to the health and safety plan recommended by EPA and implement the health and  
22 safety plan throughout the performance of the removal action; and

23           d.       a Quality Assurance Project Plan ("QAPP") that is consistent with the  
24 "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan  
25 and Data Validation Procedures," EPA OSWER Directive 9360.4-01, dated April 1990. The  
26 Workplan shall be reviewed by U.S. EPA, which may approve, disapprove, require revisions, or  
27 modify the Workplan. Once approved, the Workplan shall be deemed to be incorporated into  
28 and made a fully enforceable part of this Order. The Respondents shall implement all



workplan(s) as finally approved by the U.S. EPA.

21. All documents, including technical reports, and other correspondence to be submitted by the Respondents pursuant to this Order, shall be sent by over-night mail to the addressees set forth at the conclusion of this Order, or to such other addressees as U.S. EPA hereafter may designate in writing, and shall be deemed submitted on the date received by U.S. EPA. Respondents shall submit two (2) copies of each document to U.S. EPA, and two (2) copies to the RWQCB

22. U.S. EPA shall review, comment, and approve or disapprove each plan, report, or other deliverable submitted by Respondents. All U.S. EPA comments on draft deliverables shall be incorporated by the Respondents. U.S. EPA shall notify the Respondents in writing of EPA's approval or disapproval of a final deliverable. In the event of any disapproval, U.S. EPA shall specify the reasons for such disapproval, U.S. EPA's required modifications, and a time frame for submission of the revised report, document, or deliverable. If the modified report, document or deliverable is again disapproved by U.S. EPA, U.S. EPA shall notify the Respondents of its disapproval of the resubmitted report, document, or deliverable, and then may draft its own report, document or deliverable and incorporate it as part of this Order, may seek penalties from the Respondents for failing to comply with this Order, or may conduct the remaining work required by this Order.

23. For purposes of this Order, U.S. EPA's authorized representatives shall include, but not be limited to, the RWQCB, and consultants and contractors hired by U.S. EPA to oversee activities required by this Order.

B. Selection of Contractor(s) and Subcontractor(s):

24. All work performed by or on behalf of Respondents pursuant to this Order shall be performed by qualified individuals or contractors with expertise in hazardous waste site investigation or remediation.

25. If U.S. EPA disapproves of any person's or contractor's technical or work-experience qualifications, U.S. EPA will notify the Respondents in writing. Respondents shall, within five working days (5) days of receipt of U.S. EPA's written notice, notify U.S. EPA of the

1 identity and qualifications of the replacement(s). Should U.S. EPA disapprove of the proposed  
2 replacement(s), Respondents shall be deemed to have failed to comply with the Order.

3 26. Respondents may propose to change the individual(s), contractor(s), or  
4 subcontractor(s) retained to direct and supervise the work required by this Order. If Respondents  
5 wish to propose such a change, the Respondents shall notify EPA in writing of the name, title,  
6 and qualifications of the proposed individual(s), proposed contractor(s), or proposed  
7 subcontractor(s), and such individual(s), contractor(s) or subcontractor(s) shall be subject to  
8 approval by U.S. EPA in accordance with the terms of paragraphs 24 and 25 above. The naming  
9 of any replacement(s) by Respondents shall not extend any deadlines required by this Order nor  
10 relieve the Respondents of any of their obligations to perform the work required by this Order.

11 27. Respondents will notify U.S. EPA at seven (7) days prior to the initiation of their  
12 respective field activities so that U.S. EPA may adequately schedule oversight tasks.

13 28. At least seven (7) days prior to commencing any work at the Site pursuant to this  
14 Order, Respondents shall submit to U.S. EPA a certification that Respondents or their  
15 contractor(s) and subcontractor(s) have adequate insurance coverage or have indemnification for  
16 liabilities for injuries or damages to persons or property which may result from the activities to  
17 be conducted by or on behalf of Respondents pursuant to this Order. Respondents shall ensure  
18 that such insurance or indemnification is maintained for the duration of performance of the work  
19 required by this Order. Respondents shall ensure that the United States is named as an additional  
20 named insured on any such insurance policies.

21 C. General Provisions:

22 29. All work required by this Order shall be conducted in accordance with: the  
23 applicable portions of the EPA Action Memorandum, dated July 8, 1999 (exhibit B); CERCLA;  
24 the NCP; U.S. EPA Region 9 "Guidance for Preparing Quality Assurance Project Plans for Su-  
25 perfund Remedial Projects" (EPA, November 1992); any final amended or superseding versions  
26 of such documents provided by U.S. EPA; other applicable U.S. EPA guidance documents; and  
27 any report, document or deliverable prepared by U.S. EPA because Respondents fail to comply  
28 with this Order.

1           30. All plans, schedules, and other reports that require U.S. EPA's approval and are  
2 required to be submitted by the Respondents pursuant to this Order and shall, upon approval by  
3 U.S. EPA, be incorporated into and enforceable under this Order.

4           31. U.S. EPA will oversee Respondents' activities as specified in Section 104(a)(1) of  
5 CERCLA Section, 42 U.S.C. §9604(a)(1). Respondents will support U.S. EPA's initiation and  
6 implementation of activities needed to carry out its oversight responsibilities. Respondents shall  
7 also cooperate and coordinate the performance of all work required to be performed under this  
8 Order with any other work being performed at the site, including work performed by U.S. EPA,  
9 the State, another Respondent, or any other party performing work at the site with the approval of  
10 EPA.

11           32. Respondents shall undertake all actions required by this Order in accordance with  
12 the requirements of all applicable local, state, and federal laws and regulations unless an  
13 exemption from such requirements is specifically provided under CERCLA or unless the  
14 Respondents obtain a variance or exemption from the appropriate governmental authority.

15           33. Any hazardous substance removed off-site pursuant to this Order for treatment,  
16 storage, or disposal shall be treated, stored, or disposed of at a facility in compliance with  
17 Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and the EPA "Revised Procedures for  
18 Implementing Off-Site Response Actions," (OSWER Directive 98343.11, November 13, 1987).

19                   **X. NOTICE OF INTENT TO COMPLY**

20           34. Respondents shall, within two (2) days of the Effective Date of this Order,  
21 provide written notice to U.S. EPA of Respondents' irrevocable intent to comply with this Order.  
22 Failure to respond, or failure to agree to comply with this Order, shall be deemed a refusal to  
23 comply with this Order.

24                   **XI. OPPORTUNITY TO CONFER**

25           35. Respondents may, within three (3) days of receipt of this Order, request a  
26 conference with the Chief of the Emergency Response Office in the Superfund Division, or  
27 whomever the Chief of the Emergency Response Office may designate. If requested, the  
28 conference shall occur within three (3) days of the request, unless extended by mutual agreement

1 of the Parties, at U.S. EPA's Regional Office, 75 Hawthorne Street, San Francisco, California.

2 36. At any conference held pursuant to Respondents' request, the Respondents may  
3 appear in person, or be represented by an attorney or other representative. If Respondents desire  
4 such a conference, the Respondents shall contact David Rabbino, Assistant Regional Counsel, at  
5 (415) 744-1336.

6 37. The purpose and scope of any such conference held pursuant to this Order shall be  
7 limited to issues involving the implementation of the response actions required by this Order and  
8 the extent to which Respondents intend to comply with this Order. If such a conference is held,  
9 the Respondents may present any evidence, arguments or comment regarding this Order, its  
10 applicability, any factual determinations upon which the Order is based, the appropriateness of  
11 any action which the Respondents are ordered to take, or any other relevant and material issue.  
12 Any such evidence, arguments or comments should be reduced to writing and submitted to U.S.  
13 EPA within three (3) days following the conference. This conference is not an evidentiary  
14 hearing, and does not constitute a proceeding to challenge this Order. It does not give  
15 Respondents a right to seek review of this Order, or to seek resolution of potential liability, and  
16 no official stenographic record of the conference will be made. If no conference is requested,  
17 any such evidence, arguments or comments must be submitted in writing within three (3) days  
18 following the Effective Date of this Order. Any such writing should be directed to David  
19 Rabbino, Assistant Regional Counsel, at the address cited above.

20 38. Respondents are hereby placed on notice that U.S. EPA will take any action  
21 which may be necessary in the opinion of U.S. EPA for the protection of public health and  
22 welfare and the environment, and Respondents may be liable under Section 107(a) of CERCLA,  
23 42 U.S.C. Section 9607(a), for the costs of those actions.

## 24 **XII. ENDANGERMENT AND EMERGENCY RESPONSE**

25 39. In the event of any action or occurrence during the performance of the work  
26 which causes or threatens to cause a release of a hazardous substance or which may present an  
27 immediate threat to public health or welfare or the environment, Respondents shall immediately  
28 take all appropriate action(s) to prevent, abate, or minimize the threat, and shall immediately

1 notify U.S. EPA's primary On-Scene Coordinator ("OSC") as designated in paragraph 43, or, if  
2 the primary OSC is unavailable, U.S. EPA's alternate OSC, as designated below in paragraph 45.  
3 If neither of these persons is available, Respondents shall notify the U.S. EPA Emergency  
4 Response Unit, Region 9, phone number (415) 744-2000. Respondents shall take such action(s)  
5 in consultation with U.S. EPA's OSC and in accordance with all applicable provisions of this  
6 Order, including but not limited to the Health and Safety Plan.

7 40. Nothing in the preceding paragraph shall be deemed to limit any authority of the  
8 United States to take, direct, or order all appropriate action to protect human health and the  
9 environment or to prevent, abate, or minimize an actual or threatened release of hazardous  
10 substances at or from the Site.

### 11 **XIII. MODIFICATION OF WORK REQUIRED**

12 41. In the event of unanticipated or changed circumstances at the Site, Respondents  
13 shall notify the U.S. EPA OSC by telephone within twenty-four (24) hours of discovery of the  
14 unanticipated or changed circumstances. This verbal notification shall be followed by written  
15 notification postmarked no later than three (3) days of discovery of the unanticipated or changed  
16 circumstances.

17 42. The Director of the Superfund Division, U.S. EPA Region IX, may determine that  
18 in addition to tasks addressed herein, additional work may be required to address the  
19 unanticipated or changed circumstances referred to in paragraph 39. Where consistent with  
20 Section 106(a) of CERCLA, the Director of the Superfund Division, U.S. EPA Region IX, may  
21 direct, as an amendment to this Order, that Respondents perform these response actions in  
22 addition to those required herein. Respondents shall implement the additional tasks which the  
23 Director of the Superfund Division, U.S. EPA Region IX, identifies. The additional work shall  
24 be completed according to the standards, specifications, and schedules set forth by the Director  
25 of the Superfund Division, U.S. EPA Region IX in any modifications to this Order.

### 26 **XIV. DESIGNATED PROJECT MANAGERS**

27 43. U.S. EPA designates Daniel Suter, an employee of Region IX of U.S. EPA, as its  
28 primary On-Scene Coordinator ("OSC") and designated representative at the Site, who shall have

1 the authorities, duties, and responsibilities vested in the OSC by the NCP. This includes, but is  
2 not limited to, the authority to halt, modify, conduct, or direct any tasks required by this Order or  
3 undertake any response actions (or portions of the response action) when conditions at the Site  
4 present or may present a threat to public health or welfare or the environment as set forth in the  
5 NCP. Within fourteen (14) days of the Effective Date of this Order, Respondents shall designate  
6 a Project Coordinator who shall be responsible for overseeing Respondents' implementation of  
7 this Order, subject to EPA's review and acceptance pursuant to paragraphs 25 and 26 above. To  
8 the maximum extent possible, all oral communications between Respondents and U.S. EPA  
9 concerning the activities performed pursuant to this Order shall be directed through U.S. EPA's  
10 OSC and Respondents' Project Coordinator. All documents, including progress and technical  
11 reports, approvals, and other correspondence concerning the activities performed pursuant to the  
12 terms and conditions of this Order, shall be delivered in accordance with Paragraphs 27-29  
13 above.

14 44. U.S. EPA and Respondents may change their respective OSC and Project  
15 Coordinator. Notification of such a change shall be made by notifying the other party in writing  
16 at least five (5) days prior to the change, except in the case of an emergency, in which case  
17 notification shall be made orally followed by written notification as soon as possible.

18 45. Consistent with the provisions of this Order, the U.S. EPA designates Donn  
19 Zuroski as an alternate OSC, in the event Daniel Suter is not present at the site or is otherwise  
20 unavailable. During such times, Donn Zuroski shall have the authority vested in the On-Scene  
21 Coordinator ("OSC") by the NCP, as set forth in paragraph 43 above.

22 46. The absence of the U.S. EPA OSC from the Site shall not be cause for the  
23 stoppage of work. Nothing in this Order shall limit the authority of the U.S. EPA OSC under  
24 federal law.

## 25 **XV. SITE ACCESS**

26 47. Respondents shall permit U.S. EPA and its authorized representatives to have  
27 access at all times to the Site to monitor any activity conducted pursuant to this Order and to  
28 conduct such tests, investigations, or other response actions as U.S. EPA deems necessary.

1 Nothing in this Order shall be deemed a limit upon U.S. EPA's authority under federal law to  
2 gain access to the Site.

3 48. To the extent that Respondents require access to land other than land they own in  
4 carrying out the terms of this Order, Respondents shall, within fourteen (14) days of the Effective  
5 Date of this Order, obtain access for U.S. EPA, its contractors, oversight officials, or other  
6 authorized representatives; state oversight officials and state contractors; and Respondents or  
7 their authorized representatives. If Respondents fail to gain access within fourteen (14) days,  
8 they shall continue to use best efforts to obtain access until access is granted. For purposes of  
9 this paragraph, "best efforts" includes but is not limited to, seeking judicial assistance, providing  
10 indemnification, and/or the payment of money as consideration for access. If access is not  
11 provided within the time referenced above, U.S. EPA may obtain access under Sections 104(e) or  
12 106(a) of CERCLA.

#### 13 **XVI. REIMBURSEMENT OF OVERSIGHT COSTS**

14 49. Respondents shall reimburse U.S. EPA, upon written demand, for all response  
15 costs incurred by the United States in overseeing Respondents' implementation of the  
16 requirements of this Order. U.S. EPA may submit to Respondents on a periodic basis a bill for  
17 all response costs incurred by the United States with respect to this Order. Respondents shall,  
18 within thirty (30) days of receipt of the bill, remit by cashiers or certified check for the amount of  
19 those costs made payable to the "Hazardous Substance Superfund," to the following address:

20 U.S. Environmental Protection Agency  
21 Region 9, Attn: Superfund Accounting  
22 P.O. Box 360863M  
Pittsburgh, PA 15251

23 Respondents shall send a cover letter with any check and the letter shall identify the Buena  
24 Vista/Klau Mine Site by name and make reference to this Order. Respondents shall send  
25 simultaneously to the U.S. EPA OSC notification of any amount paid, including a photocopy of  
26 the check.

27 50. Interest at the rate established under section 107(a) of CERCLA shall begin to  
28 accrue on the unpaid balance from the day of the original demand notwithstanding any dispute or

1 objection to any portion of the costs.

## 2 **XVII. DELAY IN PERFORMANCE**

3 51. Any delay in performance of any requirement of this Order that, in the U.S. EPA's  
4 judgment, is not properly justified by Respondents under the terms of this Section shall be  
5 considered a violation of this Order. Any delay in performance of any requirement of this Order  
6 shall not affect any other obligation of Respondents under the terms and conditions of this Order.

7 52. Respondents, as applicable, shall notify U.S. EPA of any delay or anticipated  
8 delay in performing any requirement of this Order. Such notification shall be made by telephone  
9 to U.S. EPA's primary OSC within twenty-four (24) hours after Respondents first knew or should  
10 have known that a delay might occur. The Respondents shall adopt all reasonable measures to  
11 avoid or minimize any such delay. Within three (3) days after notifying U.S. EPA by telephone,  
12 the Respondents shall provide written notification fully describing the nature of the delay, any  
13 justification for delay, any reason why the Respondents should not be held strictly accountable  
14 for failing to comply with any relevant requirements of this Order, the measures planned and  
15 taken to minimize the delay, and a schedule for implementing the measures that will be taken to  
16 mitigate the effect of the delay. Increased costs or expenses associated with implementation of  
17 the activities called for in this Order are not justifications for any delay in performance.

18 53. If Respondents are unable to perform any activity or submit any document within  
19 the time required under this Order, the Respondents may, prior to the expiration of the time,  
20 request an extension of time in writing. The extension request shall include a justification for the  
21 delay. The submission of an extension request shall not itself affect or extend the time to  
22 perform any of Respondents' obligations under this Order.

23 54. If U.S. EPA determines that good cause exists for an extension of time, it may  
24 grant a request made by Respondents pursuant to paragraph 53 above, and specify in writing to  
25 the Respondents the new schedule for completion of the activity and/or submission of the  
26 document for which the extension was requested.



1                   **XVIII.       RECORD PRESERVATION**

2           55.     Respondents shall maintain, during the pendency of this Order, and for a  
3     minimum of five (5) years after U.S. EPA provides notice to Respondents that the work required  
4     by this Order has been completed, a depository of the records and documents required to be  
5     prepared under this Order. In addition, Respondents shall retain copies of the most recent  
6     version of all documents that relate to hazardous substances at the Site and that are in its  
7     possession or in the possession of its employees, agents, contractors, or attorneys. After this  
8     five-year period, Respondents shall notify U.S. EPA at least thirty (30) days before the  
9     documents are scheduled to be destroyed. If U.S. EPA so requests, Respondents shall provide  
10    these documents to U.S. EPA.

11                   **XIX. ENFORCEMENT AND RESERVATIONS**

12           56.     U.S. EPA reserves the right to bring an action against Respondents under Section  
13    107 of CERCLA, 42 U.S.C. §9607, for recovery of any response costs incurred by the United  
14    States related to this Order and not reimbursed by Respondents. This reservation shall include  
15    but not be limited to past costs, direct costs, indirect costs, the costs of oversight, the costs of  
16    compiling the cost documentation to support oversight costs, as well as accrued interest as  
17    provided in Section 107(a) of CERCLA, 42 U.S.C. §9607.

18           57.     Notwithstanding any other provision of this Order, at any time during the  
19    response action, U.S. EPA may perform its own studies, complete the response action (or any  
20    portion of this response action) and seek reimbursement from Respondents for its costs, or seek  
21    any other appropriate relief.

22           58.     Nothing in this Order shall preclude U.S. EPA from taking any additional  
23    enforcement action, including modification of this Order or issuance of additional Orders, or  
24    additional remedial or removal actions as U.S. EPA may deem necessary, or from requiring  
25    Respondents in the future to perform additional activities pursuant to CERCLA, 42 U.S.C.  
26    §9607(a), et seq., or any other applicable law. Respondents shall be liable under CERCLA  
27    Section 107(a), 42 U.S.C. §9607(a), for the costs of any such additional actions.

1           59.     Notwithstanding any provision of this Order, the United States hereby retains all  
2 of its information gathering, inspection and enforcement authorities and rights under CERCLA,  
3 the Resource Conservation and Recovery Act, or any other applicable statutes or regulations.

4           60.     Notwithstanding compliance with the terms of this Order, including the  
5 completion of an U.S. EPA-approved response actions, Respondents are not released from  
6 liability, if any, for any enforcement actions beyond the terms of this Order taken by U.S. EPA.

7           61.     U.S. EPA reserves the right to take any enforcement action pursuant to CERCLA  
8 or any other legal authority, including the right to seek injunctive relief, monetary penalties,  
9 reimbursement of response costs, and punitive damages for any violation of law or this Order.

10          62.     U.S. EPA expressly reserves all rights and defenses that it may have, including  
11 the U.S. EPA's right both to disapprove of work performed by Respondents and to request the  
12 Respondents perform tasks in addition to those detailed in this Order, as provided in Section  
13 VIII(a) (Work to be Performed) of this Order.

14          63.     This Order does not release Respondents, individually or collectively, from any  
15 claim, cause of action or demand in law or equity, including, but not limited to, any claim, cause  
16 of action, or demand which lawfully may be asserted by representatives of the United States or  
17 the State of California.

18          64.     No informal advice, guidance, suggestions, or comments by U.S. EPA regarding  
19 reports, plans, specifications, schedules, and any other writing submitted by Respondents will be  
20 construed as relieving Respondents of their obligation to obtain such formal approval as may be  
21 required by this Order.

## 22                               XX.   SEVERABILITY

23          65.     If any provision or authority of this Order or the application of this Order to any  
24 circumstance is held by a court to be invalid, the application of such provision to other  
25 circumstances and the remainder of this Order shall not be affected thereby, and the remainder of  
26 this Order shall remain in force.

1                                   **XXI. DISCLAIMER**

2           66.     The United States, by issuance of this Order, assumes no liability for any injuries  
3 or damages to persons or property resulting from acts or omissions by Respondents, or their  
4 employees, agents, successors, assigns, contractors, or consultants in carrying out any action or  
5 activity pursuant to this Order. Neither U.S. EPA nor the United States shall be held as a party to  
6 any contract entered into by Respondents, or their employees, agents, successors, assigns,  
7 contractors, or consultants in carrying out any action or activity pursuant to this Order.

8                                   **XXII. PENALTIES FOR NONCOMPLIANCE**

9           67.     Respondents are advised pursuant to Section 106(b) of CERCLA, 42 U.S.C.  
10 Section 9606(b), that willful violation or subsequent failure or refusal to comply with this Order,  
11 or any portion thereof, may subject Respondents to a civil penalty of up to \$25,000 per day for  
12 each day in which such violation occurs, or such failure to comply continues. Failure to comply  
13 with this Order, or any portion thereof, without sufficient cause may also subject Respondents to  
14 liability for punitive damages in an amount three times the amount of any cost incurred by the  
15 government as a result of the failure of Respondents to take proper action, pursuant to Section  
16 107(c)(3) of CERCLA, 42 U.S.C. Section 9607(c)(3).

17                                  **XXIII. TERMINATION AND SATISFACTION**

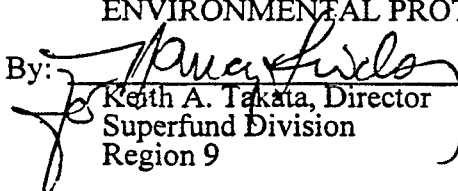
18           68.     The provisions of this Order shall be deemed satisfied upon Respondents' receipt  
19 of written notice from U.S. EPA that Respondents have demonstrated, to the satisfaction of U.S.  
20 EPA, that all of the terms of this Order, including any additional tasks which U.S. EPA has  
21 determined to be necessary, have been completed.

Unilateral Administrative Order 99-13

IT IS SO ORDERED:

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

By:

  
Keith A. Takata, Director  
Superfund Division  
Region 9

Date: 12 July 99

EPA Region 9 Contacts:

Daniel Suter  
On-Scene Coordinator (SFD-6)  
Hazardous Waste Management Division  
U.S. EPA, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105  
(415) 744-2297

William Weis  
Enforcement Case Manager (SFD-6)  
U.S. EPA, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105  
(415) 744-2338

David A. Rabbino  
Assistant Regional Counsel (RC-3)  
Office of Regional Counsel  
U.S. EPA, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105  
(415) 744-1336

1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8

## Additional Definitions

"Action Memorandum" shall mean the Action Memorandum issued by the United States Environmental Protection Agency on July 8, 1999.

"Construction" shall mean the Respondents', or their contractor's, installation/construction of the specific response actions each is required to perform, as set forth in EPA's Action Memorandum, attached hereto as exhibit B.

"Contractor" shall mean Respondents' contractor(s) and subcontractors contracted to perform the installation/ construction, and operation and maintenance activities relating to any of the specific response actions at the Site Respondents are required to perform.

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or federal holiday. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

"Identified Contamination" shall mean any contamination, or threat of contamination, resulting from the release, or threat of release, of any hazardous substances, pollutants, contaminants, or solid waste identified in the administrative record for the Site as of the effective date of EPA's Action Memorandum for the Site, dated July 8, 1999, and other technical reports reflecting the results of all sampling activities conducted at the Site.

"Operation and Maintenance activities" shall include future operation and maintenance of all structures built or installed to contain the arsenic contamination at the Site until such time as EPA approves the cessation of such activities.

"Paragraph" shall mean a portion of this Unilateral Order identified by an Arabic numeral.

"Parties" shall mean the United States, and Buena Vista Mine, Inc., Harold Biaggini, and Edward Biaggini.

"Section" shall mean a portion of this Unilateral Order identified by a Roman numeral and including one or more paragraphs.

"Site" shall mean the Buena Vista/Klau Mine Superfund Site, which includes all that property located approximately 12 miles west of Paso Robles, San Luis Obispo County, California, more specifically described as that property located at Townships 26S and 27S, Range 10E, Sections 3, 4, 33, and 34 of the U.S. Geological Survey Series (USGS), Mount Diablo Base & Meridian, Adelaida 15 minute Quadrangle, and that is listed as assessment parcels 014-341-003 and 014-341-004 of the San Luis Obispo County Assessor's Office (Buena Vista Mine); and Township 26S, Range 10E, Section 33 USGS Mount Diablo Base & Meridian, Adelaida 15 minute Quadrangle, and that is listed as assessment parcel 014-341-001 of the San Luis Obispo County Assessor's Office (Klau Mine).



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105

**ACTION MEMORANDUM**

**DATE:** July 8, 1999

**SUBJECT:** Request for a Removal Action at the Buena Vista/Klau Mercury Mine Site,  
San Luis Obispo County, California

**FROM:** Daniel Suter, OSC *DS*  
Emergency Response Office (SFD-6)

**TO:** Keith Takata, Director  
Superfund Programs (SFD-1)

**THRU:** Terry Brubaker, Chief *TB*  
Emergency Response Office (SFD-6)

**I. PURPOSE**

The purpose of this Action Memo is to request and document approval of the proposed Removal Action described herein for the Buena Vista/Klau Mercury Mine Site located in San Luis Obispo County, California ("the Site").

Conditions presently exist at the Site which, if not addressed by implementing the response action documented in this Action Memorandum, may lead to continued off-site migration and release of contaminants which may pose an imminent and substantial endangerment to the public health or welfare or the environment.

**II. SITE CONDITIONS AND BACKGROUND**

Site Status:	Non-NPL
Category of Removal:	Time-Critical
CERCLIS ID:	CA114190578
SITE ID:	FM

## **A. Site Description**

The Buena Vista/Klau Mercury Mine Site consists of two parcels of property. The properties, known as the Buena Vista mine and the Klau mine, are owned by Buena Vista Mine, Inc. ("BVMI"), and are located approximately 12 miles west of Paso Robles, San Luis Obispo County. Mineral extraction in the vicinity of the site began in the late 1860's and continued until 1970. During mining operations, mining waste including waste rock, tailings and mercury extraction wastes were dumped in drainage channels situated downstream from the mines. Weathering from heavy rains have caused deep erosional channels throughout the site, thereby releasing additional sediment into the North Fork and South Fork of Las Tablas Creek, both of which are tributaries of Las Tablas creek. Data collected by the California Regional Water Quality Control Board ("the Regional Board") demonstrate that mercury-laden sediment from the site is impacting the Las Tablas Creek and the Lake Nacimiento Reservoir (see Figure 1).

### **1. Physical location**

The Buena Vista/Klau Mercury Mine Site consists of two adjacent parcels of property. The Buena Vista Mine is located at Township 26S and 27S, Range 10E, Sections 3, 4, 33 and 34 of the U. S. Geological Survey Series (USGS), Mount Diablo Base & Meridian, Aldelaida 15 minute Quadrangle. The Buena Vista Mine Property is listed as assessment parcels 014-341-003 and 014-341-004 of the San Luis Obispo County Assessor's Office. The Klau Mine is located at Township 26S, Range 10E, Section 33 USGS Mount Diablo Base & Meridian, Aldelaida 15 minute Quadrangle. The Klau Mine property is listed as assessment parcels 014-341-001 of the San Luis Obispo County Assessor's Office. The area surrounding the Site is largely used for grazing purposes. The Lake Nacimiento Reservoir is approximately 10 miles north of the Site.

### **2. Site characteristics**

The Buena Vista/Klau Mine Site consists of two abandoned mine sites which encompasses approximately 175 acres, and include five miles of underground workings, a two acre mine pit, and eroded slopes comprised of approximately 300,000 tons of mine tailings, overburden and waste rock. The mine slopes are eroding into tributaries of Las Tablas Creek which flows to the Lake Nacimiento Reservoir. Approximately 100,000 cubic yards of mine tailings have been consolidated next to a drainage channel. These tailings are generating Acid Mine Drainage (AMD) at the rate of between five and ten gallons per minute. Additional AMD is being generated from the surface expressions of the below ground workings. A small lake, approximately one acre large and 12 to 18 feet deep, is situated above the underground workings on the Klau Mine property. This lake is recharging the underground workings and causing additional AMD generation. The area around the Site is characterized by very steep

topography, with elevation ranging from 1,050 feet to more than 1,600 feet. Las Tablas Creek is a tributary to the Lake Nacimiento Reservoir, which in turn flows into the Salinas River and on to the Monterey Bay National Marine Sanctuary.

### 3. Removal site evaluation

On May 15, 1999 On-Scene Coordinator (OSC) Dan Suter, a member of the START Team, two Emergency Response Remediation Services (ERRS) personnel, and personnel from the Central Coast Regional Water Quality Control Board (RWQCB) conducted a removal site evaluation. The removal site evaluation included observations from the site walk, and the review of information and data provided by the RWQCB.

The RWQCB has in its possession analytical data from the chemical analysis of the mine tailings, the sediment eroding into Las Tablas Creek, Las Tablas Creek sediment, dissolved mercury concentrations in Las Tablas Creek water, and background conditions. Total mercury concentrations in background sediments (all in mg/kg or parts per million) ranged from .04 ppm to 1.0 ppm, with a mean of .276 ppm. Total mercury concentrations in sediment eroding from the Klau mine into Las Tablas Creek ranged from 5.5 ppm to 16,500 ppm, with a mean concentration of 2259 ppm. The mine tailings pile at the Buena Vista Mine contain mercury concentrations of up to 940 ppm. Dissolved mercury concentrations in Las Tablas Creek water directly below the mine ranged as high as 0.046 mg/L. All water samples collected significantly exceeded the EPA ambient water quality criteria for mercury of 0.00012 mg/L.

In 1994, the RWQCB commissioned a study to identify and determine the sources of mercury contamination into the Lake Nacimiento Reservoir. The study concluded that the Buena Vista/Klau Site is the primary source of mercury loading and water pollution within the Las Tablas watershed, and that the Las Tablas Creek watershed contributes over half of the total mercury load to the Lake Nacimiento Reservoir. The Buena Vista/Klau Site, therefore, is the primary contributing source of mercury contamination in the Las Tablas Creek and Lake Nacimiento Reservoir system. The study also found a significant bioaccumulation of mercury in several fish species. The California Department of Health Services (DHS) has posted health advisories along Las Tablas Creek and at Lake Nacimiento Reservoir. Elevated mercury concentrations in the fish in the Lake Nacimiento Reservoir has triggered the San Luis Obispo County Environmental Health Department to issue a Health Advisory on Catching and Eating Fish in Lake Nacimiento and Las Tablas Creek. This Health Advisory warned women who are pregnant or who may soon become pregnant, nursing mothers, and children under five not to eat fish caught in this area, and warned all other persons not to eat more than one meal per month of fish caught in this area.



4. Release or threatened release into the environment of a hazardous substance, or pollutant or contaminant

Mercury is a hazardous substances as defined by Section 101(14) of CERCLA. A continued and / or unmitigated release of mercury from the Site could constitute a threat to the local human and animal populations, as well as to surface waters including the Las Tablas Creek and Lake Nacimiento reservoir. Lake Nacimiento reservoir is a designated drinking water source and is currently a drinking water aquifer recharge source as well as a recreational boating / fishing resource.

5. NPL status

This Site is not currently being evaluated for the NPL.

6. Maps, Pictures and other Graphic Representations

Maps and photographs of the site are attached to this Action Memo.

B. **Other Actions to Date**

1. Previous actions

Buena Vista Mines, Inc. (BVMI) has performed limited remediation steps at the Buena Vista Mine, and little or no remediation steps at the Klau Mine. A rudimentary AMD collection and treatment system has been installed at the Buena Vista Mine. Silt fences and water diversion channels have been constructed at the Buena Vista Mine with limited success in stopping off site migration of the contaminants. Historical information appears to indicate that the BVMI plugged the Carson Drift, the main adit at the Klau Mine, in an attempt to curtail the inflow of water to the mine workings. No other actions appear to have been performed at the Klau Mine.

2. Current actions

Currently ongoing operation and maintenance of the AMD treatment system is being performed at the Buena Vista Mine. There is no work currently occurring on the Klau mine property. Conversations with BVMI's consultant, SECOR, left the impression with those attending the site visit that SECOR has not been given full authorization by BVMI to perform the necessary remedial measures at the mines to contain and control sediment runoff and AMD discharge into the forks of Las Tablas Creek.

### **C. State and Local Authorities' Roles**

#### **1. State and local actions to date**

For the past eleven years the RWQCB has been collecting and analyzing data from the Site, the Las Tablas Creek, and more recently Lake Nacimiento Reservoir in order to determine the extent of mercury contamination. The RWQCB has also issued numerous orders to BVMI requiring BVMI to address the contamination at and flowing from the site. All of the orders have basically been ignored by BVMI.

#### **2. Potential for continued State/local response**

Neither the State nor the local agencies have sufficient funds to perform the Site cleanup. It is been brought to the attention of the RWQCB staff that the RWQCB will be expected to play a significant role in the cleanup, and to perform certain activities such as operation and maintenance of a constructed AMD wetland treatment system and continued monitoring of the situation. The RWQCB staff have notified their management and is currently researching funding. In addition, representatives from State and local response organizations may be requested to assist and coordinate with the OSC in various tasks including planning and community relations.

### **III. THREATS TO PUBLIC HEALTH OR WELFARE OR THE ENVIRONMENT, AND STATUTORY AND REGULATORY AUTHORITIES**

Pursuant to Section 300.415(b)(2) of the National Contingency Plan ("NCP") the following conditions necessary for initiating a removal action exist:

#### **A. Actual or potential exposure to hazardous substances or pollutants or contaminants by nearby populations or the food chain**

Transport of mercury-laden sediment from the Site to the Las Tablas watershed and Lake Nacimiento Reservoir has been documented by the RWQCB. The biological data collected by the RWQCB to date appears to indicate that biological receptors within the Las Tablas watershed and Lake Nacimiento Reservoir are accumulating mercury. Lake Nacimiento Reservoir is a designated source of drinking water and is currently a drinking water aquifer recharge source. Water samples collected from the Las Tablas Creek significantly exceeded the EPA ambient water quality criteria for mercury of 0.000012 mg/L. Lake Nacimiento Reservoir is also used for many recreational purposes including boating and fishing. High mercury levels have led to health warnings regarding the consumption of fish from the lake. The principle pathway for the uptake of mercury by humans and wildlife is through the consumption of fish. As a result of its tendency to bioaccumulate in the food chain, mercury concentrations tend to be higher in upper trophic level species.

**B. Actual or potential contamination of drinking water supplies**

Lake Nacimiento is a designated source of drinking water and is currently a drinking water aquifer recharge source. Water samples collected from the Las Tablas Creek significantly exceeded the EPA ambient water quality criteria for mercury of 0.000012mg/L.

**C. Hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers, that may pose a threat of release**

Not applicable.

**D. High levels of hazardous substances or pollutants or contaminants in soils at or near the surface, that may migrate**

Elevated levels of mercury are present in the tailing pile, eroded slopes and in sediments present in the Las Tablas Creek. Sampling conducted by the Regional Board has demonstrated that such transport has occurred in the past and is continuing to occur.

**E. Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released**

Heavy winter rains have caused severe surface erosion particularly along the banks of the Klau branch of Las Tablas Creek. The surface erosion has increased transport of mercury-laden sediments to the Las Tablas Creek and on to the Lake Nacimiento Reservoir.

**F. Threat of fire or explosion**

Not applicable.

**IV. ENDANGERMENT DETERMINATION**

Actual or threatened releases of hazardous substances or from this Site, if not addressed by implementing the response action selected in this Action Memorandum, may present an imminent and substantial endangerment to public health, or welfare, or the environment.

## V. PROPOSED ACTIONS AND ESTIMATED COSTS

### A. Proposed Actions

#### 1. Proposed action description

This removal action will consist of the following activities:

- Site prep and mobilization. This will include grading the entrance road to the Site and mobilization of equipment and personnel;
- At the Buena Vista Mine, preparation of the existing mine pit area to receive fill material. This will include grading and compaction in the area next to the mine pit;
- Excavation and transport of the Buena Vista reactive mine tailings and Klau mine tailings from the stream banks and drainage area to the mine pit repository area. This will require cutting haul roads to facilitate transport of material and excavation and transport of approximately 100,000 cubic yards from the Buena Vista mine and 50,000 cubic yards from the Klau mine;
- Placement and compaction of the excavated mining waste within the existing mine pit repository area. The mining waste will be placed in lifts and compacted appropriately;
- Final grading, contouring and installation of a liner covering the mine tailings within the mine pit area in order to prevent future AMD generation, erosion and landsliding;
- Grade, contour, revegetate and divert storm water from the existing eroded slopes;
- Drain the existing lake at the Klau mine and regrade the area above the underground workings to prevent recharge of the underground workings and additional AMD generation; and
- Construct a gravity fed wetlands to treat the remaining AMD seeps.

#### 2. Applicable or relevant and appropriate requirements (ARARs)

This removal action will, to the extent practicable considering the exigencies of the situation, attain applicable or relevant and appropriate requirements under federal environmental or state environmental or facility siting laws.

ARARs include RCRA standards as implemented through California's federally authorized RCRA program and RCRA Land Disposal Restrictions as set forth at 22 CCR Chapter 12-18. All waste handling, storage, packaging, transportation and disposal will be conducted in accordance with RCRA. Certain sections of the federal Clean Water Act and Safe Drinking Water Act may also be ARARs for the Site.

The Removal is being conducted in conjunction with the RWQCB. In addition to RCRA, the State has identified the following as potential ARARs: California Water Code, Division 7, Section 13000, et seq. (Porter-Cologne Water Quality Control Act); Water Quality Control Plan for Inland Waters of California (Water Code Section 13170, Clean Water Act Section 303(c)(1)); Water Quality Control Plan for Ocean Water of California (Water Code Section 13170.2); Water Quality Control Plan for the Enclosed bays and Estuaries of California (Water Code Section 13140); State Board Resolution 68-10 (Policy on Maintaining the High Quality of State Waters); State Board Resolution No. 68-63 (Sources of Drinking Water Policy); State Board Resolution 92-49 (Policies and Procedures for Investigation and Abatement of Discharges Under Water Code Section 13304); Title 27 CCR, Chapter 7 (Discharges of Waste to Land); Title 23 CCR, Division 3, Chapter 15, Article 5, Safe Drinking and Toxic Enforcement Act of 1986 (Prop. 65), California Health and Safety Code Section 21100 et seq.; Title 22 CCR, Division 4, Chapter 15, Section 66401, et seq. (Public Water Supply).

## **B. ESTIMATED COSTS**

### **Cost Projection Scenario**

Project ID Number: EM                      Date: 6-99  
Cleanup Contractor: CET              START Contractor: E & E

### **Cost Projection Summary**

Contractor Personnel	550,000
Contractor Equipment	325,000
Other Cost Items	622,000
Cleanup Contractor Subtotal	1,497,000
Extramural Contingency (15%)	224,550
Cleanup Contractor Subtotal	\$1,721,550
START Personnel	50,000
START Analytical Services	10,000
Other Cost Items	20,000
START Subtotal	70,000

Project Contingency (15%)	10,500
START Subtotal	\$ 80,500
Extramural Subtotal	\$1,802,050
Project Contingency(5%)	90,102
Total Extramural Cost	\$1,892,152
EPA Regional Personnel	50,000
EPA Headquarters Direct (10% of Regional Hours)	5,000
EPA Travel and Lodging	10,000
EPA Total	\$ 65,000
Project Total	\$1,957,152

**VI. EXPECTED CHANGE IN THE SITUATION SHOULD ACTION BE DELAYED OR NOT TAKEN**

If this action is not taken or is delayed, surface erosion will continue to transport mercury-laden sediments to the Las Tablas Creek and on to the Lake Nacimiento reservoir. AMD will continue to flow to Las Tablas Creek and into the Lake Nacimiento Reservoir eventually flowing to the Salinas River and on to Monterey Bay.

**VII. OUTSTANDING POLICY ISSUES**

No outstanding policy issues have been identified at this time.

**VIII. ENFORCEMENT**

See Enforcement Confidential Addendum

## IX. RECOMMENDATION

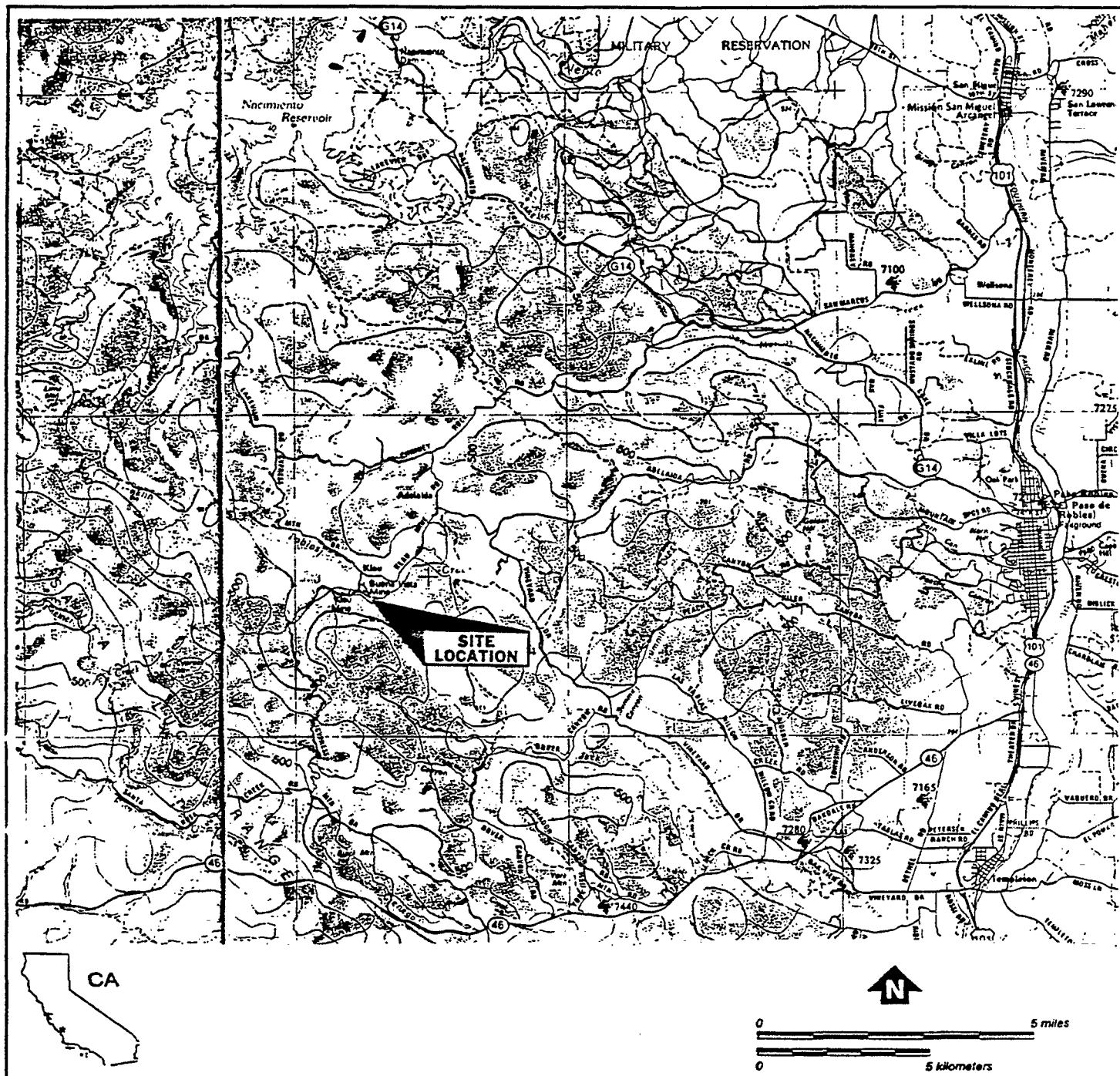
This decision document represents the selected removal action for the Buena Vista/Klau Mercury Mine Site located in San Luis Obispo County, California, developed in accordance with CERCLA as amended, and the NCP. This decision is based on the administrative record for the site.

Conditions at the site meet the NCP section 300.415(b)(2) criteria for a removal and I recommend you approve the proposed removal action. The total project ceiling if approved will be \$1,957,152. Of this, an estimated \$1,149,978 comes from the Regional removal allowance. Dependant upon budget allocations an additional \$571,572 will come from the Regional removal allowance.

*J. S. Muhlberg* *1/8/99*  
Approval Signature Date

\_\_\_\_\_  
Disapproval Signature

\_\_\_\_\_  
Date



ecology and environment, inc

Figure 1  
**SITE LOCATION MAP**  
 Buena Vista/Klau Mercury Mines  
 San Luis Obispo, CA

TDD:09-9905-0004  
 PAN:0428BVSFXX  
 Date: June 14, 1999